KEN PROPERTY SDN BHD & ORS v. SAZEAN HOLDINGS SDN BHD

COURT OF APPEAL, PUTRAJAYA
ROHANA YUSUF JCA
IDRUS HARUN JCA
MARY LIM JCA
[APPEAL NO: W-02NCVC(A)-1829-11-2015]
31 JULY 2017

CIVIL PROCEDURE: *Injunction – Interlocutory injunction – Appeal against – Termination of memorandum of understanding ('MOA') – Respondent applied for injunctive reliefs – Appellants prohibited from taking any action on development of land – Whether respondent novated its position as purchaser of land pursuant to MOA – Whether respondent possessed legal or beneficial right to land – Whether interests of respondent monetary – Whether damages sufficed as remedy to respondent – Delay in application for injunctive reliefs – Whether fatal – Balance of convenience – Whether in favour of appellant*

CONTRACT: *Agreement – Termination – Memorandum of understanding ('MOA') – Respondent applied for injunctive reliefs – Appellants prohibited from taking any action on development of land – Whether respondent novated its position as purchaser of land pursuant to MOA – Whether respondent possessed legal or beneficial right to land – Whether interests of respondent monetary – Whether damages sufficed as remedy to respondent – Delay in application for injunctive reliefs – Whether fatal – Balance of convenience – Whether in favour of appellant*

The respondent entered into a sale and purchase agreement ('SPA') to acquire from Gadini Sdn Bhd ('Gadini') four plots of land ('the land'). Subsequent to the SPA, the respondent incorporated JB Capital Sdn Bhd to develop the land into a world class commercial centre. The respondent, however, was not able to perform under the SPA as it did not have the financial means or capacity to undertake the development. The respondent then chose Ken Property Sdn Bhd ('the first appellant') as its joint venture partner. A memorandum of understanding ('MOA') ensued between the respondent and the first appellant. The respondent averred that it had fulfilled the terms of the MOA in that, *inter alia,* the respondent, the first appellant and Gadini had entered into a novation agreement in respect of the SPA for the first appellant to replace the respondent as the purchaser of the land from Gadini, and that Malaysian Building Society Berhad ('MBSB') who fully owned Gadini, had sold the entire shareholding in Gadini to Ken Holdings Bhd ('the fourth appellant') through a share sale agreement. Subsequently, the respondent complained that there was representation made by one Dato Kenny Tan for the first appellant that the project would commence within six months from

the date of the MOA. Despite the considerable passage of time, the project never commenced. The respondent thus terminated the MOA as well as the share sale agreement because, according to the respondent, this delay had caused a fundamental breach by the appellants. The respondent filed a suit against the appellants seeking, *inter alia*, a declaration that the termination by the respondent was lawful and an order for the appellants collectively or jointly to transfer the land to the respondent. Pending the disposal of the suit between them, the respondent applied for an interlocutory injunction which was partly allowed by the High Court. The appellants were prohibited from (a) making any application to the public authority for development order of the land until the disposal of the trial; (b) taking any action that may change the said land's status, shape or condition of the said land until the disposal of the trial; and (c) disposing and/or selling the land until the disposal of the trial. The appellants thus appealed against the said decision. The issues that arose were (i) whether the respondent had proved a *prima facie* case of its legal right to the land; (ii) whether the trial judge had failed to consider the issues of laches and delay on the part of the respondent in applying for the injunctive relief; (iii) whether there was an imminent danger that the land would be disposed of; (iv) whether order of any injunctive relief should be allowed; and (v) whether the balance of convenience was in favour of the respondent.

Held (allowing appeal with costs)
Per Rohana Yusuf JCA delivering the judgment of the court:

(1) With the MOA in place, both parties had acted the various understandings agreed between them. The respondent was divested of any interest in the land. By virtue of the deed of novation, the respondent could no longer claim any right which had been novated to the first appellant. Pursuant to the MOA and as agreed between the first appellant, Gadini and the respondent, the respondent had novated its position as the purchaser of the land under the SPA. The respondent thus had not made out a *prima facie* case over its legal right over the land or that it possessed any legal or beneficial right to the land. The deed of novation had made the fourth appellant a legally registered owner and its title could only be defeated under the exceptions to s. 340 of the National Land Code ('NLC'). (paras 14-17)

(2) The basis of termination of the MOA and share sale agreement by the respondent was by reason of an alleged breach of agreement by the appellants and not for reasons of invalidity of the MOA. The interest of the respondent was monetary. That being the case, damages would suffice as a remedy to the respondent. Where parties could be adequately compensated by way of damages, there was no dearth of authority to support the trite legal position that injunctive relief should not be granted. (paras 19 & 21)

(3) The trial judge in granting the reliefs sought had failed to consider that the respondent had been guilty of delay in the application for the said injunctive reliefs. After terminating the agreement on 22 August 2014, the respondent took about five months to commence the suit. During case management on 25 May 2015, the respondent had informed the court of its intention to file the application for injunction but yet when the court directed that the application be filed at the latest by 29 May 2015, the respondent failed to comply but only filed the application on 1 June 2015 instead. An injunction order is an equitable remedy and the court would not help a party who sleeps on its rights. (para 23)

(4) It was not in the respondent's favour for the injunction to be granted because the respondent wanted the project to be speeded up. The injunction could only delay the progress of the development further. The respondent was approbating and reprobating. By seeking an injunction, the respondent was taking an inconsistent position. It wanted the project to proceed fast but yet it sought the prayers, which would stifle further progress. The trial judge had failed to properly weigh the balance of convenience. There was nothing to suggest that the respondent would suffer any irreparable harm without the injunction order. Hence, the balance of convenience must lie in favour of the appellants. (paras 27-29)

Bahasa Malaysia *Headnotes*

Responden memasuki satu perjanjian jual beli ('PJB') untuk memperoleh daripada Gadini Sdn Bhd ('Gadini') empat plot tanah ('tanah'). Seterusnya, responden bergabung dengan JB Capital Sdn Bhd untuk membangunkan tanah untuk dijadikan sebuah pusat komersial kelas dunia. Responden, walau bagaimanapun, tidak dapat melaksanakan apa-apa bawah PJB kerana tidak mempunyai kewangan dan keupayaan bagi memulakan pembangunan. Responden kemudiannya memilih Ken Property Sdn Bhd ('perayu pertama') sebagai rakan usahasamanya. Satu memorandum persefahaman ('MOA') dipersetujui antara responden dan perayu pertama. Responden menyatakan bahawa ia telah memenuhi syarat-syarat MOA, antara lain, responden, perayu pertama dan Gadini telah memasuki perjanjian novasi berkenaan PJB untuk perayu pertama menggantikan responden sebagai pembeli tanah daripada Gadini, dan Malaysian Building Society Berhad ('MBSB') yang memiliki Gadini sepenuhnya, telah menjual segala saham dalam Gadini kepada Ken Holdings Bhd ('perayu keempat') melalui perjanjian jualan saham. Seterusnya, responden mengadu bahawa terdapat representasi daripada Dato Kenny Tan bagi pihak perayu pertama bahawa projek akan dimulakan dalam tempoh enam bulan dari tarikh MOA. Walaupun masa sudah lama berlalu, projek gagal dimulakan. Responden dengan itu membatalkan MOA dan juga perjanjian jualan saham kerana menurut

responden, kelewatan ini telah menyebabkaan satu pelanggaran asasi oleh perayu-perayu. Responden memfailkan guaman terhadap perayu-perayu menuntut, antara lain, satu pengisytiharan bahawa pembatalan responden adalah mengikut undang-undang dan satu perintah supaya perayu-perayu secara kolektif atau bersama memindah milik tanah tersebut kepada responden. Sementara menunggu pelupusan guaman antara mereka, responden memohon satu injunksi interlokutori yang sebahagiannya dibenarkan Mahkamah Tinggi. Perayu-perayu dilarang daripada (a) membuat apa-apa permohonan kepada pihak berkuasa awam untuk perintah pembangunan sehingga pelupusan perbicaraan; (b) mengambil apa-apa tindakan yang boleh mengubah status, bentuk atau keadaan tanah tersebut sehingga pelupusan perbicaraan; dan (c) menghapuskan dan/atau menjual tanah tersebut hingga pelupusan perbicaraan. Dengan itu, perayu merayu terhadap keputusan tersebut. Isu-isu yang berbangkit adalah (i) sama ada responden membuktikan kes *prima facie* berkenaan hak undang-undangnya ke atas tanah tersebut; (ii) sama ada hakim bicara gagal mempertimbangkan isu-isu kelengahan dan kelewatan oleh pihak responden dalam permohonannya untuk relief-relief injunktif; (iii) sama ada wujud risiko jelas bahawa tanah akan dilupuskan; (iv) sama ada perintah relief injunktif harus dibenarkan; dan (v) sama ada imbangan kebarangkalian memihak pada responden.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Rohana Yusuf HMR menyampaikan penghakiman mahkamah:

(1) Kedua-dua pihak telah bertindak mengikut apa yang difahami antara mereka menurut MOA. Responden dilepaskan daripada apa-apa kepentingan dalam tanah tersebut. Menurut perjanjian novasi, responden tidak boleh menuntut apa-apa hak yang dinovasikan kepada perayu pertama. Menurut MOA yang dipersetujui antara perayu pertama, Gadini dan responden, responden telah menovasikan kedudukannya sebagai pembeli tanah tersebut bawah PJB. Responden dengan itu gagal membuktikan kes *prima facie* hak undang-undangnya ke atas tanah tersebut atau bahawa ia memiliki apa-apa hak undang-undang atau bermanfaat ke atas tanah tersebut. Perjanjian novasi menjadikan perayu keempat tersebut pemilik berdaftar mengikut undang-undang dan hak miliknya hanya boleh dinafikan bawah pengecualian-pengecualian pada s. 340 Kanun Tanah Negara ('KTN').

(2) Asas pembatalan MOA dan perjanjian jualan saham oleh responden adalah kerana terdapat dakwaan pelanggaran perjanjian oleh perayu-perayu dan bukan untuk alasan-alasan bahawa MOA tidak sah. Kepentingan responden bersifat kewangan. Oleh itu, ganti rugi memadai sebagai remedi kepada responden. Apabila pihak-pihak terlibat boleh diberi bayaran pampasan secukupnya melalui ganti rugi, terdapat beberapa autoriti yang menyokong kedudukan undang-undang mantap bahawa relief injunktif tidak sepatutnya dibenarkan.

(3) Dalam membenarkan relief-relief yang dituntut, hakim bicara gagal mengambil kira kesalahan responden yang lewat memfailkan permohonan untuk relief- relief injunktif tersebut. Selepas membatalkan perjanjian pada 22 Ogos 2014, responden mengambil masa lima bulan untuk memulakan guaman. Semasa pengurusan kes pada 25 Mei 2015, responden memaklumkan pada mahkamah niatnya memfailkan permohonan injunksi tetapi apabila mahkamah mengarahkan permohonan difailkan selewat-lewatnya pada 29 Mei 2015, responden gagal mematuhi tetapi hanya memfailkan permohonan pada 1 Jun 2015. Perintah injunksi adalah remedi ekuiti dan mahkamah tidak akan membantu pihak yang mengabaikan haknya.

(4) Tidak wajar injunksi diberikan memihak kepada responden kerana responden ingin projek tersebut dipercepatkan. Injunksi akan hanya melambatkan progres pembangunan. Responden telah bertindak secara aprobat dan reprobat. Dengan menuntut injunksi, responden mengambil kedudukan yang tidak konsisten. Ia menginginkan projek diteruskan dan dipercepatkan tetapi ia juga membuat tuntutan yang akan menghalang kemajuan selanjutnya. Hakim bicara gagal mempertimbangkan imbangan kebarangkalian dengan sewajarnya. Responden tidak akan mengalami apa-apa kerugian yang tidak boleh diperbaiki tanpa perintah injunksi. Oleh itu, imbangan kebarangkalian harus memihak pada perayu-perayu.

Case(s) referred to:

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors [1995] 1 CLJ 461 SC ***(refd)***

American Cyanamid v. Ethican [1975] 1 All ER 504 ***(refd)***

Evercrisp Snack Products (M) Sdn Bhd & Anor v. Sweeties Food Industries Sdn Bhd [1979] 1 LNS 19 HC ***(refd)***

Sivaperuman v. Heah Seok Yeong Realty Sdn Bhd [1978] 1 LNS 184 FC ***(refd)***

Tan Chiw Thoo v. Tee Kim Kuay [1997] 1 CLJ 541 FC ***(refd)***

Tenaga Nasional Bhd v. Teobros Development Sdn Bhd [2008] 1 LNS 395 CA ***(refd)***

Legislation referred to:

National Land Code, s. 340

Specific Relief Act 1950, s. 11(2)

Other source(s) referred to:

Kerr on Injunction, A Treatise on the Law and Practice of Injunction, pp. 19-20

For the appellants - Kamarul Hisham Kamaruddin, Ling Yee Siew & Mohd Ruzaini Zulkifli; M/s The Chambers of Kamarul Hisham & Hasnal Rezua

For the respondent - K Goik & Wendy Ooi; M/s Nasir, Kenzin & Tan

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Suit No: 22NCVC-64-01-2015 (overruled).]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Rohana Yusuf JCA:

[1] The High Court at Kuala Lumpur had, on 6 October 2015 granted partly the injunctive reliefs sought by the respondent in respect of four plots of land in the Town and District of Johor Bahru. The appellants are appealing against that decision. We had heard the appeal and had allowed the same on the grounds which we set out below.

[2] The background leading to the application by the respondent were these. Way back in the year 2009, the respondent entered into a sale and purchase agreement dated 7 January 2009 (SPA) to acquire from Gadini Sdn Bhd (Gadini) four plots of land HS (D) 193439, PTB No. 19196; HS (D) 193440, PTB No. 19197; HS (D) 193441, PTB No. 19198; HS (D) 193442, PTB No. 19199; all in the Town and District of Johor Bahru ("the land") at a purchase price of RM70 million. Gadini was fully owned by Malaysian Building Society Berhad (MBSB). On the land was an abandoned project for the development of a commercial centre, which belonged to MBSB. Amongst the reasons for the failure of the project was the strict planning requirement by the Majlis Perbandaran Johor Bahru.

[3] Pursuant to the SPA, the respondent paid RM2 million as deposit and the balance of RM68 million was to be paid 24 months from the date of the execution of the SPA. Subsequent to the SPA, the respondent had incorporated JB Capital Sdn Bhd which would be appointed to be the developer, to develop the land into a world-class commercial centre. Efforts were taken by the respondent for the development on the land to be known as JB Capital. According to the respondent, the proposed development had been approved by the State Government of Johore.

[4] The respondent was not able to perform under the SPA. Despite being granted two extensions by Gadini and each at a penalty of RM1 million, the respondent failed to pay. The respondent did not have the financial means or capacity to undertake the development on its own and started looking for a joint venture partner. The respondent said despite various offers made by many others, the respondent chose Ken Property Sdn Bhd, the first appellant as its joint venture partner. A memorandum of understanding (MOA) dated 14 June 2012 ensued between the respondent and the first appellant.

[5] By the MOA it was essentially agreed between the respondent and the first appellant that:

(i) the SPA would be novated by way of a deed of novation for the first appellant to replace the respondent as the purchaser of the land from Gadini;

(ii) the respondent will cause and procure Gadini to consent and to execute the deed of novation;

(iii) alternatively, the respondent will cause and procure MBSB to sell its entire shareholding in Gadini to the appellants;

(iv) the completion of the sale of Gadini will be subjected to the fulfilment of relevant listing requirements applicable;

(v) the completion date of the SPA was to be extended to 6 July 2011 and further extended to 13 October 2011;

(vi) the appellants would acquire from the respondent the entire shareholding of the respondent in JB Capital Sdn Bhd and JB Capital would be the developer of the land;

(vii) JB Capital and a special purpose company (SPC) would be appointed to provide project management services in respect of the development of the land; and

(viii) the shareholding in SPC would be held in the proportion of 75% by the appellants' subsidiary and 25% by the respondent.

[6] The other appellants in this appeal are the group companies of the appellants. Ken Capital Sdn Bhd (second appellant) was formerly known as JB Capital which was acquired by the first appellant from the respondent and was the current developer appointed for the project. The third appellant, Ken JBCC Sdn Bhd was formerly Gadini Sdn Bhd acquired under the MOA by the first appellant. The fourth appellant (Ken Holdings Bhd) was the party which signed the share sale agreement to acquire Gadini from its owner MBSB.

[7] From the affidavits filed, it was not disputed that parties had acted upon the terms of the MOA. The respondent averred that it had fulfilled the terms of the MOA in that; in compliance with cl. 1.1 the respondent and the first appellant and Gadini had entered into a novation agreement on 18 June 2012 in respect of the SPA dated 7 January 2009. Pursuant to cl. 1.2, MBSB had sold the entire shareholding in Gadini to the fourth appellant through a share sale agreement dated 18 July 2012. The appellant had acquired the shares in JB Capital Sdn Bhd (the second appellant) from the respondent at RM2. Pursuant to cl. 3.1, a company called One Project Development Sdn Bhd was incorporated as the SPC on 30 December 2013 to provide management service for the development of the land. The shareholding in the One Project Development Sdn Bhd will be held by the second appellant at 75% and the respondent at 25%. The first appellant had paid a total of RM5 million to the respondent as reimbursement cost or advance/loan as agreed and stipulated in the appendix to the MOA.

[8] The respondent complained that there was representation made by Dato Kenny Tan Boon Keong (Dato Kenny Tan) for the first appellant prior to the MOA that the project would commence within six months from the date of MOA. However, despite the considerable passage of time, the project never commenced. The respondent by a letter dated 22 August 2014 terminated the MOA as well as the share sale agreement because according to the respondent, this delay had caused a fundamental breach by the appellants.

[9] Following the termination, the respondent filed the current suit against the appellants seeking for; a declaration that the termination by the respondent *vide* letter of 22 August 2014 is lawful; an order for the appellants collectively or jointly to transfer the land to the respondent; damages to be assessed or alternatively for an inquiry to determine the amount payable by the respondent to the appellants for the costs expended thus far, in acquiring the land or alternatively for an order that the appellants be made to purchase the interest of the respondent in the project.

[10] Meanwhile, before the filing of the current suit, the respondent had on 19 October 2014 entered a private caveat on the land. A second caveat was again entered on the land on 14 June 2015. Pursuant to a civil suit No: 24NCVC-831-06-2015, the second caveat was removed. The first caveat was also finally removed *vide* appeal No: W-02(IM) (NCVC)-1378-08-2015.

[11] Pending the disposal of the suit between them, the respondent applied for an interlocutory injunction which the learned High Court Judge had partly allowed. These interlocutory orders are the subject of the current appeal. By the order of the High Court the appellants were prohibited:

(i) from making any application to the public authority, especially to Majlis Bandaraya Johor Bahru ("MBJB") for development order of the land until the disposal of the trial;

(ii) from taking any action that may change the said land's status, shape or condition of the said land until the disposal of the trial; and

(iii) from disposing and/or selling the land until the disposal of the trial.

[12] In appealing against the above orders, the appellants' counsel raised several complaints. It was the case of the appellants that in granting the above orders, the learned judge had erred both in law and fact when the learned judge decided that the respondent had proved a *prima facie* case of its legal right to the land. The other complaint raised was that the learned judge had failed to consider the issues of laches and delay on the part of the respondent in applying for the injunctive relief. It was also contended that the learned judge had wrongly decided that there were serious issues to be tried. The

appellants further contended that when there was non-existence of imminent danger that the land would be disposed of no order of any injunctive relief should be allowed. The learned judge was also said to be in error, in balancing the convenience in favour of the respondent.

[13] Before discussing the issues raised by the appellants, we found it necessary to have a quick overview of the respondent's case against the appellants. From the pleadings and the affidavits filed, we would sum up the case of the respondent against the appellants in this way. The claim of the respondent was premised on an alleged breach of representation by one Dato' Kenny Tan. This representation, amongst others, had caused or induced the choice of the first appellant as a joint venture partner, which eventually culminated in the MOA between parties.

[14] With the MOA in place, both parties had acted upon the various understandings agreed between them. From the affidavits, it became quite apparent that the respondent was divested of any interest in the land. By virtue of the deed of novation, the respondent can no longer claim any right which had been novated to the first appellant. Pursuant to the MOA and as agreed between the first appellant, Gadini and the respondent, the respondent had novated its position as the purchaser of the land under the SPA dated 7 January 2009.

[15] On top of and above the novation agreement, the entire shares of Gadini, which was then the registered owner of the land had also been acquired by the fourth appellant, Ken Holdings Bhd. This was pursuant to the share sale agreement of 18 July 2012 where MBSB sold its entire shareholding in Gadini to the fourth appellant. This is not disputed as the respondent in their affidavits in support, had admitted that the land in fact now belongs to the fourth appellant.

[16] Before the right of the appellants over the land can be disrupted, the respondent in this case must make out a fair question to raise its own legal rights over the land, by either setting out a *prima facie* legal title to the land or that the right of the appellants' claim over the land would fail. Having taken into account the arrangement as we have alluded to above, we agreed with the contention of the appellants that the respondent had not made out a *prima facie* case over its legal right over the land or that it possesses any legal or beneficial right to the land. It is plainly clear that the respondent had been divested of any interest in the land upon the deed of novation which had made the fourth appellant the new owner.

[17] What had also become clear was that, there was no dispute as to who is the current owner of the land. The deed of novation had made the fourth appellant a legally registered owner and its title can only be defeated under the exceptions to s. 340 of the National Land Code (NLC). We did not find

any averment by the respondent on any of the exceptions to s. 340 of the NLC. Any challenge on title of the land may only be made by establishing any of the exceptions to the indefeasible title of the fourth appellant. We were guided in this instance by the Federal Court in *Tan Chiw Thoo v. Tee Kim Kuay* [1997] 1 CLJ 541; [1997] 2 MLJ 221. The Federal Court held in that case that an indefeasible title could only be defeated by any of the grounds specified under s. 340 of the NLC, or any other grounds of equity.

[18] In analysing the application for injunction, His Lordship found firstly, that there were issues in dispute between parties which qualified the first test of granting the injunctive reliefs, following the principle enunciated by the Supreme Court in *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors* [1995] 1 CLJ 461; [1995] 1 MLJ 241. From His Lordship's judgment at para. 13 the dispute referred to, was whether or not there was a breach of the terms of the contract between them on the alleged representation. It was not a dispute on the title or ownership of the land.

[19] In our view, the disputes between them, if any, would therefore be on the issue of whether or not there was a breach of the agreement between the parties. That being the case the respondent's remedy would be mainly for damages. Where parties can be adequately compensated by way of damages, there is no dearth of authority to support the trite legal position that injunctive relief should not be granted (see *American Cyanamid v. Ethican* [1975] 1 All ER 504, *Tenaga Nasional Bhd v. Teobros Development Sdn Bhd* [2008] 1 LNS 395; [2008] 6 MLJ 391).

[20] Looking at the respondent's case again, pursuant to cl. 3.2 of the MOA the appellants are to pay the SPC 18% of the net gross development value of the development of the land based on cash collections on a quarterly basis. The SPC known as One Project Development Sdn Bhd was incorporated on 30 November 2013 to provide management services for the development of the land, pursuant to the MOA. The shareholding of this company is Ken Capital Sdn Bhd (second appellant) holding 75% shares with the respondent holding the other 25%.

[21] The basis of termination of the MOA and share sale agreement by the respondent was by reason of an alleged breach of agreement by the appellants and not for reasons of invalidity of the MOA. Thus, the respondent in fact acknowledged the validity of the MOA. From the background facts, the outstanding clause to be performed was as averred in the affidavit in support of encl. 18 by Tan Sri Dato' Seri Panglima Sheikh Abdul Kadir bin Sheikh Fadzir on behalf of the respondent. At para. 29 of the affidavit, it was averred that the respondent through the SPC would obtain 18% of the gross development value. The respondent would have a right to the 25% equity in the SPC, which meant that the respondent's views requirements and prior

approval in the development would have to be obtained first. It was therefore quite clear that the interest of the respondent is monetary. All these facts go to support a case that damages would suffice as a remedy to the respondent (see *Sivaperuman v. Heah Seok Yeong Realty Sdn Bhd* [1978] 1 LNS 184; [1979] 1 MLJ 150).

[22] We noted the invocation of s. 11(2) of the Specific Relief Act 1950 by the learned judge at para. 15 of his judgment. In our view, the application of s. 11(2) by the learned judge was misplaced, because the suit filed by the respondent has nothing to do with any breach of contract to transfer property as envisaged by that provision.

[23] The learned judge in granting the reliefs sought, had also failed to consider that the respondent had been guilty of delay in the application for the said injunctive reliefs. After terminating the agreement on 22 August 2014 the respondent took about five months to commence the suit. The application for injunction was only made approximately four months later, that is, on 1 June 2015. Despite taking such time, during case management on 25 May 2015 the respondent had informed the court of its intention to file the application for injunction but yet when the court directed that the application be filed at the latest by 29 May 2015 the respondent failed to comply, but only filed the application on 1 June 2015 instead. An injunction order is an equitable remedy and the court will not help a party who sleeps on its rights. This is because the delay can have tremendous effect on the other party.

[24] The delay by the respondent in this case was not without implication. According to the appellants, the delay had caused the application by the second appellant to the authorities on the development to be rejected, especially when there existed a private caveat entered by the respondent. The filing of an application to extend that private caveat pending trial had caused further prejudice and hence when a late application for injunction was made, it would naturally cause the trial to be further delayed. The case of *Evercrisp Snack Products (M) Sdn Bhd & Anor v. Sweeties Food Industries Sdn Bhd* [1979] 1 LNS 19; [1980] 2 MLJ 297 demonstrates the point that the court would not grant interlocutory injunction for reasons of delay. A delay without any satisfactory explanation would disentitle the applicant to be granted with the interim order of injunction.

[25] As we have earlier alluded to, the respondent had twice entered caveat on the land. Such caveat would have achieved the purpose of preventing the appellants from dealing with the land where the respondent is able to prove its caveatable interest. The removal of the caveats would suggest that the respondent failed to show its interest on the land.

[26] The reason for the parties to come into the arrangement between them was because the respondent required a loan in order to proceed with the development project. The appellants had allegedly represented that they would begin development within six months from the signing of MOA. However, after two years the respondent terminated the MOA but at the same time the respondent had been pushing for development during the period. According to the appellants, this had caused the appellants to expend monies and efforts to make repeated applications for development orders as stated in the affidavit of Tan Chek Siong. Seeking for an injunction to constrain the progress would contradict the respondent's own position which had caused the appellants more costs and resources.

[27] Looking at the above facts and circumstances, we would agree with learned counsel for the appellants that the learned judge had failed to properly weigh the balance of convenience. It would also not be in the respondent's favour for the injunction to be granted because the respondent wanted the project to be speeded up. The injunction can only delay the progress of the development further. The respondent was approbating and reprobating. In that way, the respondent was acting very unfairly to the appellants. By seeking for an injunction, the respondent was taking an inconsistent position. It wanted the project to proceed fast but yet it sought for the prayers, which would stifle further progress.

[28] An interlocutory injunction is governed by strict equitable principles where the parties must display a fair and honest conduct. Learned author, Kerr on Injunction in his book "*A Treatise on the Law and Practice of Injunction*" at pp. 19 to 20 observed that parties possessing full knowledge of their rights, and by their conduct have encouraged others to expend money or alter their condition, cannot call for the assistance of the court. The respondent contended for a *status quo* is to be maintained pending disposal of the suit. The *status quo* before the suit was that the land remained with the appellants and it would progress towards the development desired by both parties. According to the appellants, they had obtained conditional approval for KM Kedua which was later rejected. That notwithstanding, they have rights of appeal. With the injunction in place, the whole effort would be wasted and unnecessary costs would be incurred if a new and fresh application had to be made. Whereas, from the affidavit evidence there was nothing to suggest that the respondent would suffer any irreparable harm without the injunction order. Hence, the balance of convenience must lie in favour of the appellants.

[29] On all the reasons above, we had allowed the appellants' appeal with costs. We have made an order for the orders of the High Court to be set aside.